

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

United States Court of Appeals
For the
District of Columbia Circuit

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Joseph W. Stewart

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BRIEF AND APPENDIX FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,827

MARY E. INGRAM, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

949

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

LEO A. ROVER,

United States Attorney.

LEWIS A. CARROLL,

ARTHUR J. McLAUGHLIN,

SAMUEL J. L'HOMMEDIEU, JR.,

Assistant United States Attorneys.

QUESTION PRESENTED

The appellant was indicted and convicted of violations of the District of Columbia Code, Section 22-1501. Appellant was represented by experienced counsel who was familiar with the factual situation involved and who cross-examined the government's witnesses. Appellant, who knew she had a right to a jury trial, consented to be tried by the Court.

At the hearing on the motion for a new trial, the appellant contended that she desired to take the stand at the trial and to offer the testimony of a witness or witnesses. However, there was no indication as to the nature of her testimony or that of her witnesses.

In the opinion of the appellee, the sole issue presented in the instant appeal is whether the Court below abused its discretion when it refused to grant the motion for a new trial which was based upon the contentions that the appellant was deprived of due process of law as guaranteed by the Fifth Amendment and the effective representation of counsel as guaranteed by the Sixth Amendment.

(1)

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,827

MARY E. INGRAM, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On September 29, 1952, a five count indictment was filed in the District Court, charging appellant Ingram, and one Eliche Busby¹ with managing, carrying on and promoting a lottery, and also with selling and transferring a chance, right or interest in a lottery in violation of the District of Columbia Code (1951) § 22-1501; and with possession of certain slips used in carrying on the numbers game, in violation of the District of Columbia Code (1951) § 22-1502 (R. 33-34).² Appellant Ingram

¹ The defendant Busby was convicted on Counts One and Two (R. 31) but did not appeal.

² Specifically, Count One of the indictment charged both defendant Busby and appellant Ingram with managing, carrying on and promoting a lottery known as a numbers game; Count Two charged defendant Busby with selling and transferring a chance, right or interest in a lottery known as a numbers game; Count Three charged appellant Ingram with a similar offense; Count Four charged defendant Busby with the possession of numbers slips and Count Five charged appellant Ingram with a similar offense (R. 33-34).

was convicted of violating Section 1501 or Title 22 and she brings the instant appeal solely upon the ground that her constitutional rights were violated by the actions of her attorney.

Prior to trial, counsel for appellant Ingram and counsel for the defendant Busby requested trial by the court (R. 3). The trial court thereupon asked both appellant Ingram and defendant Busby if they knew that they were entitled to a trial by jury and they both answered in the affirmative. The trial court also asked if they desired to be tried without a jury and, again, both answered in the affirmative (R. 3-4). Appellant Ingram and defendant Busby and their respective attorneys thereupon signed a waiver of trial by jury which was consented to by the United States and approved by the trial judge (R. 47).

In this opening statement, the prosecutor stated that he intended to prove that on May 25, 1952, Officer Vaughn went to 2724 11th Street NW., and made a numbers play with defendant Busby, and that on June 11, 1952, the officer returned to the same premises and appellant Ingram accepted a bet and gave the officers a numbers slip (R. 4). The attorney for defendant Busby made a one sentence opening statement in which he denied the guilt of his client (R. 4). The attorney for appellant Ingram informed the court in his opening statement that his client was originally arrested for a violation of a liquor law and not for a lottery violation but that, after being acquitted on the liquor charge, the Government then charged her with a lottery violation (R. 4-5).

The first Government witness was Silas C. Vaughn, a member of the Metropolitan Police Department, who testified that on May 25, 1952, he went to 2724 11th Street where he saw both appellant Ingram and defendant Busby. On this occasion, he placed a numbers bet with the defendant Busby. On June 11, 1952, the officer returned to the premises and made several numbers plays with appellant Ingram. Appellant told the officer that it was necessary to be careful as "they" were after numbers writers. The Government introduced into evidence the numbers slip which appellant gave to the officer (R. 5-9, 20).

On cross-examination by the attorney for defendant Busby it was developed that the officer went to the premises in question on May 25, 1952, primarily to buy liquor (R. 10). The attorney for appellant attempted to prove that the instant case was brought for spite because a previous case involving a violation of the laws relating to liquor had been dismissed (R. 12). Although the response from the witnesses was not favorable, the trial judge requested, and received an explanation of the delay between the violation and the time the officers filed a complaint (R. 14, 16-17). At the close of the Government's case, the attorney for appellant Ingram made a motion to dismiss, which was denied (R. 19).

The defendant Busby took the stand and denied that he ever accepted any money from Officer Vaughn, or that he ever wrote numbers. However, he admitted being on the premises once or twice a week (R. 21-25). The trial court found defendant Busby guilty on Counts One and Two and appellant Ingram guilty on Counts One and Three. Defendant Busby was found not guilty on the fourth count and appellant Ingram was found not guilty on the fifth count (R. 31). Appellant was sentenced to concurrent terms of imprisonment of from thirty to ninety days on each count. The execution of the sentences was suspended and appellant Ingram was placed on probation for a period of two years (R. 41).

Appellant by her trial counsel filed a motion for a new trial (R. 38). A motion for a new trial for appellant was also filed by the trial counsel for the defendant Busby (R. 37). These motions came on for hearing in the District Court on April 2, 1953. On that date appellant Ingram filed an affidavit in support of her motions for a new trial. In this affidavit, appellant alleged that she employed her trial counsel to represent her in the District Court, but that he informed her that Foster Wood, her present attorney, would try the case, and that after conferring with Mr. Wood, who had interviewed witnesses and was prepared to try the case, that Mr. Miller, her trial counsel, appeared and represented her. In the affidavit, it was further alleged that her trial counsel refused to permit her to testify and refused to place on the witness stand a witness who was present and would have testified that the appellant was inno-

cent of the charge. Further, appellant complained that there was other evidence which was not produced. Appellant also alleged that she was not guilty of the offense in question (R. 39).

At the hearing on the motion for a new trial, it was admitted by Mr. Wood, appellant's present counsel, that appellant had employed his associate as her trial counsel. Mr. Wood stated to the court that on the morning of the trial his associate had said that he was going to try the case, and did so. Mr. Wood further stated that appellant had a number of character witnesses as well as the woman who occupies the same apartment with appellant who were not called to testify. Mr. Wood also stated that he felt that appellant was denied the right to testify in her own behalf (App. at p. 18). However, the court pointed out that appellant was represented by experienced counsel. The court further pointed out that appellant was not denied the right to a jury trial since she stated in open court that she waived such a right (App. at p. 18). Appellant informed the court that she "had never consulted the case with Mr. Miller [trial counsel] at all . . ." and that he would not let her get on the stand and tell her side of the story (App. at pp. 18-19).

At the conclusion of the hearing, the court denied the motion for a new trial (App. at p. 18). Appellant was then sentenced to serve concurrent terms of imprisonment of from thirty to ninety days on each count. The execution of the sentences was suspended and appellant Ingram was placed on probation for a period of two years (R. 41). From the judgment of the lower court appellant now brings this appeal.

Amendments involved

Constitution of the United States, Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, nor property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States. Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in denying a motion for a new trial based upon the contentions that the appellant's rights were violated under the Fifth and Sixth Amendments where the evidence indicated that the appellant was represented by experienced counsel who was familiar with the circumstances involved in the instant case and who cross-examined the government witnesses. The appellant cannot complain where the record further shows that she knew that she had a right to jury trial and that she waived such a right and was tried by the court.

ARGUMENT

I. The appellant's motion for a new trial was properly denied by the trial court

The sole issue presented in the instant appeal is whether the court below abused its discretion when it refused to grant the motion for a new trial which was based upon the contentions that the appellant was deprived of due process of law as guaranteed by the Fifth Amendment and the effective representation of counsel as guaranteed by the Sixth Amendment.³

³ Appellant relies upon *State v. Jones*, 12 Mo. App. 93 (1882) and *United States v. Ragen*, 52 F. Supp. 265 (D. C. N. D. Ill. 1943) to support her position that her constitutional rights were violated. The *Jones* case was overruled by *State v. Dreher*, 38 S. W. 567, 137 Mo. 11 (1897). The *Ragen* case was reversed by the Seventh Circuit. See 143 F. 2d 774.

A motion for a new trial is, of course, addressed to the sound discretion of the trial court. *Moder v. United States*, 62 App. D. C. 65, 64 F. 2d 703, cert. denied 289 U. S. 739 (1933); *Landrum v. United States*, 62 App. D. C. 18, 63 F. 2d 990 (1933), and the denial of such a motion is not ordinarily assignable as error on appeal. *Hamilton v. United States*, 78 U. S. App. D. C. 316, 140 F. 2d 679 (1944); *Beard v. United States*, 65 App. D. C. 231, 82 F. 2d 837 (1936), cert. denied 298 U. S. 655; *West v. United States*, 20 App. D. C. 347 (1902). As was stated in the *West* case at page 351:

We have so repeatedly held in this court that the action of the trial court upon a motion for a new trial is not the subject of review here, that we must suppose that the assignment of error made in that regard in this case, was made through inadvertence. Such assignment, of course, cannot be considered.

On occasions when the appellate courts will review the action of the lower court in denying a motion for a new trial, it is well established that they will not upset the action of the lower court unless there is a clear showing of abuse of discretion. *Battle v. United States*, —U. S. App. D. C.—, 206 F. 2d 440 (1953); *Thompson v. United States*, 88 U. S. App. D. C. 235, 188 F. 2d 652 (1951); *Tillman v. United States*, 96 A. 2d 272 (Mun. Ct. App. 1953); *Gage v. United States*, 167 F. 2d 122 (9th Cir. 1948); *Grover v. United States*, 183 F. 2d 650 (9th Cir. 1950); *State v. Blight*, 273 P. 751, 150 Wash. 475 (1929) (where appellant claimed that her counsel's conduct deprived her of a fair trial). And see *Tompsett v. State of Ohio*, 146 F. 2d 95 (6th Cir. 1944), cert. denied 324 U. S. 869. There the court said at page 98: "The incompetency or negligence of an attorney employed by a defendant does not ordinarily constitute grounds for a new trial * * *" In *Miller v. Hudspeth*, 176 F. 2d 111 (10th Cir. 1949) the court said at p. 119: "A new trial may not be declared * * * because of mistakes on the part of his counsel." In *State v. Lindstrom*, 231 N. W. 12, 180 Minn. 435 (1930), the court pointed out that:

Where the defense is conducted by counsel selected by defendant or by those to whom he intrusted that

duty, it is only under very exceptional circumstances that a new trial will be granted on account of the manner in which the defense was conducted, or on account of a subsequently asserted dereliction of duty on the part of such counsel * * *

And this Court in *Burton v. United States*, 80 U. S. App. D. C. 208, 209, 151 F. 2d 17 (1945), *cert. denied* 326 U. S. 789, expressed the rule as follows:

There are few trials free from mistakes by counsel. After judgment and an appeal, errors in judgment as to the conduct of the defense are easy to point out. Here the appellant selected his counsel and made no objection to his conduct during trial. Under such circumstances it is well settled that error in judgment, incompetency or mismanagement of the defense by counsel is generally not ground for a new trial. This is not to deny that a defendant's rights may be so "flagrantly disregarded by counsel of his own choosing, and, as a consequence, justice so manifestly miscarry", that a new trial should be ordered.

No allegation of such a flagrant disregard of appellant's rights has been made in the instant case, nor would any or all of the alleged mistakes of counsel constitute such a flagrant disregard of appellant's rights. At the outset it should be noted that the appellant does not claim that the attorney who represented her at the trial was deficient in legal learning or lacking in trial experience. The only claims made are (1) that her counsel was unacquainted with the circumstances or basis of appellant's defense as shown by his cross-examination and by the statements that he made at the outset of the trial to the effect that he had known nothing of this case until that morning; (2) that her counsel deprived her of her constitutional right to testify and to call witnesses in her defense; (3) that her counsel deprived her of her constitutional rights by waiving trial by jury; and (4) that her counsel failed to adequately cross-examine the witnesses for the Government and asked improper questions on cross-examination.

The trial counsel was of appellant's own choice (R. 39), having exercised her constitutional right to make such a selection. The record indicates that she made no complaint about her counsel's conduct until after she was convicted. It must be assumed, therefore, that she had no complaint to make, for she certainly could have made it to the court if she felt that she was being denied representation. See *Burton v. United States*, *supra*, and *State v. Jukrich*, 242 P. 590, 49 Nev. 217 (1926). And assuming, *arguendo*, that counsel was negligent in some detail, the trial court properly denied appellant's motion for a new trial. *Burton v. United States*, *supra*, since, in criminal cases, the negligence of trial counsel is imputed to the defendant and he or she is bound thereby, because the act of the counsel is the act of the client. *Graham v. Squier*, 45 F. Supp. 253 (D. C. W. D. Wash., 1942), affirmed 132 F. 2d 681, *cert. denied* 318 U. S. 777; *State v. Dreher*, 137 Mo. 11, 38 S. W. 567 (1897); *Edwards v. Territory*, 8 Ariz. 342, 76 P. 458 (1904); *Smith v. State*, 199 Iowa 568, 202 N. W. 112 (1925); *Sayre v. Comm.*, 194 Ky. 338, 238 S. W. 737 (1922). Further, there is a presumption that the attorney in the lower court acted in a proper manner. *Dorsey v. Gill*, 80 U. S. App. D. C. 9, 148 F. 2d 857 (1945); *Brink v. United States*, 202 F. 2d 4 (10th Cir. 1953), *cert. denied* 345 U. S. 1001; and such a presumption is rebuttable only with strong and convincing proof. *Fambles v. State*, 97 Ga. 625, 25 S. E. 365 (1896).

1. Counsel was prepared

Appellant's contention that her counsel was unacquainted with the circumstances or basis of her defense, and that he announced at the outset of the trial that he had known nothing of the case until the morning of the trial is factually incorrect and totally lacking in merit. However, the opening statement of the trial counsel illustrated his familiarity with the factual situation involved. He was fully aware that an arrest was originally made for a violation of the liquor laws and that the gambling violations which were involved in the instant case were not placed against the appellant until some time later. In this regard, appellant's counsel shows a more thorough understanding of the case than did counsel for defendant

Busby. Appellant's counsel was able to interest the trial judge in this position to such an extent that he asked the prosecutor to explain. (R. 14.) Consequently the record reveals that appellant's counsel was fully aware of the circumstances involved in the instant case. The fact that he chose one theory of defense rather than another or that he presented the defense in a fashion not suitable to the appellant does not mean that her rights under the Fifth or Sixth Amendment were violated. It is not the duty of an appellate court to undertake to substitute its judgment of the proper tactics in the trial of a case for that of the lawyer in the forum. *Felton v. United States*, 83 U. S. App. D. C. 277, 278, 170 F. 2d 153, 1948, cert. denied 335 U. S. 831. And contrary to what appellant now says, the trial counsel did not state in his opening statement that he had known nothing of the case until that very morning. A similar statement is, however, contained in counsel's closing argument to the court. However, it is an offhand remark which is not entitled to much weight because appellant's own affidavit states that prior to trial she employed the counsel who represented her in the trial court. Further, as is stated hereinabove, the opening statement made by counsel shows his command of the factual situation. Even assuming, *arguendo*, that counsel did not discuss the case with appellant until the date of the trial, appellant was not denied due process or the right to effective representation. Obviously, the time in preparation of a particular case will vary with the nature of the charge, counsel's familiarity with the applicable law, his experience, and with the facts. *United States v. Wight*, 176 F. 2d 376 (2nd Cir. 1949), cert. denied 338 U. S. 950. In *Slaughter v. United States*, 89 A. 2d 646 (Mun. Ct. App. 1952), the court pointed out that the case then under consideration was fairly simple and said:

* * * We cannot say that a recess of undisclosed length was insufficient time for preparation for trial.

Here, appellant had experienced counsel (App. at p. 18) and the factual situation and legal problems involved were anything but complex. Consequently, appellant was not denied due process or the effective assistance of counsel.

2. Examination of witnesses

Appellant's contention that her counsel denied her the right to take the stand and failed to call witnesses likewise is not a basis for saying that she was deprived of the effective representation by counsel.⁴ In the first place, appellant did not state in her affidavit nor did she state at the hearing on the motion for a new trial what her testimony would have been had she been called as a witness other than she denied that she was guilty of the offense and stated that the "only numbers slips which she has ever made were made to play numbers for herself" (App. at pp. 17-19, R. 39.) It is further to be noted that her present attorney, who also represented appellant at the time of the hearing of the motion for a new trial, did not state what appellant would have testified to had she been called as a witness, although he did say that she had not engaged in "any numbers enterprise."

A similar situation is presented in regard to the alleged witnesses who were not called to testify. The court was not supplied with affidavits by these witnesses as to what their testimony would have been. As a matter of fact, the court was not even orally informed as to what the testimony of these alleged witnesses would have been. True, appellant's affidavit does state that there was a witness whose name was not revealed, who would have testified that the appellant was innocent, but the exact nature of his witness' testimony is left entirely to speculation.⁵ It is also true that during the hearing

⁴ Appellant also states in her brief (p. 8) that there was evidence that the police had searched her apartment and found no liquor or numbers slips. Present counsel's statement to the court (App. at p. 18) appears to indicate that these raids were not at the time of the crime or the arrest. Appellant argues that such evidence should have been presented to the court. It is submitted that such evidence is not relevant. But assuming, *arguendo*, that it is relevant, whether it should have been brought to the attention of the court is obviously a matter of trial tactics. Evidence of raids made upon the premises easily might be harmful to his client's case. Consequently, the appellant cannot complain if her retained counsel failed to produce such evidence. *Felton v. United States, supra*.

⁵ This is apparently the same witness referred to by appellant's counsel at the hearing on the motion for a new trial. (App. at p. 18.) Present counsel did not then inform the court of the nature of this witness' testimony, and consequently the testimony that this witness would have given is still left completely to speculation.

on the motion for a new trial, the court was informed by Mr. Wood that appellant had character witnesses. However, the names of these character witnesses, or their exact testimony was not revealed.

We, therefore, have a situation where appellant contends that her attorney would not let her take the stand and refused to put her witnesses on the stand; but other than in vague generalities, neither appellant nor her present counsel informed the court as to what their testimony would be. She has, in fact, failed to even state that the testimony of her witnesses would be favorable to her position. See *Tolbert v. United States*, 55 A. 2d 91 (Mun. Ct. App. 1947), appeal denied by this court, No. 9668, Jan. 14, 1948. A defendant in a criminal case cannot allow the trial to reach its conclusion without calling her witnesses, *People v. Martin*, 177 N. W. 193, 210 Mich. 139 (1920), or without testifying herself. *Norman v. United States*, 100 F. 2d 905 (6th Cir. 1939), cert. denied 306 U. S. 660, and then, if the verdict be unfavorable, demand a new trial. And obviously, no reason is shown for a new trial, where appellant only vaguely states what she or some alleged witnesses would testify to, if called to the stand.

The trial counsel might have decided that the witnesses would do him more harm than good, and he might have had some reasons for keeping appellant from taking the stand. Whether this was the best possible way of presenting the case is immaterial, since appellate courts cannot decide whether the trial counsel used the best tactics. *Felton v. United States*, *supra*. Theories may differ. *People v. Martin*, *supra*. Further, the appellant is not entitled to the most brilliant counsel. *United States v. Thompson*, 56 F. Supp. 683 (D. C. S. D. N. Y., 1944). It is easy to look back at a trial and point to errors. But this does not mean that the person on trial was deprived of any of his or her constitutional rights. *Slaughter v. United States*, *supra*. Consequently, appellant's position that her constitutional rights were violated in that her attorney failed to allow her to testify or to allow certain witnesses to testify is untenable.

3. Trial by jury

It is contended that appellant's constitutional rights were violated because her counsel waived jury trial. This contention is factually incorrect and frivolous. The record reveals that after counsel for appellant informed the court that trial without a jury was desired, the trial court asked appellant if she realized she had a right to a jury trial. Appellant replied in the affirmative. The trial court then asked appellant if she desired to be tried without a jury, in response to which the appellant again answered in the affirmative. Thereupon, appellant and her attorney signed a waiver of trial by jury. This waiver was consented to by the United States and approved by the court. It, therefore, cannot be said that appellant's rights were in any way violated by waiving trial by jury. The trial court was overly cautious in protecting appellant and to hold that the waiver here involved was defective would mean that it would be impossible to waive a jury trial.

4. Cross-examination was proper

It is also contended that the failure to adequately cross-examine the witnesses for the Government, and the asking of improper questions during cross-examination, deprived appellant of her constitutional rights. Here, the record reveals that counsel for the defendant Busby cross-examined the witnesses at length and thereafter, that counsel for appellant briefly cross-examined the same witnesses. Of course, it is elementary that there are times when counsel should limit his cross-examination or should not cross-examine a witness at all. Cross-examination may hurt more than help. Here, counsel for the defendant Busby had cross-examined the principal witness for the Government concerning whether or not he made a numbers play with his client. Appellant's trial counsel heard the unfavorable answer elicited from the witness and could easily have thought that any cross-examination along that line would be to his client's detriment. Failure to cross-examine in the instant case does not demonstrate ineffective representation of appellant. *Slaughter v. United States, supra*. And in connection with this criticism of trial

attorney's tactics in this case, reference is made to *Felton v. United States, supra*, where it is stated that:

The suggestion made by appellant that it is the duty of this court to undertake to substitute its judgment of the proper tactics in the trial of a case for that of the lawyer in the forum is baseless and unacceptable.

And in this same vein, it seems appropriate to conclude with the following quotation of the court in the case of *United States v. Thompson, supra*:

* * * Unquestionably, now that the record is made, able counsel can go over every question and perhaps from a better one, may assign better reasons for objections taken, may suggest avenues of cross-examination which did not occur to him who actually faced the court and jury. So, too, military strategists go over the movements of lost battles and demonstrate how they might have been won. The short answer to this line of argument is that the constitution does not guarantee the assistance of the most brilliant counsel.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

LEO A. ROVER,

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LEWIS A. CARROLL,

ARTHUR J. McLAUGHLIN,

SAMUEL J. L'HOMMEDIEU, Jr.

Assistant United States Attorneys.

APPENDIX

(15)

3 She occupies this apartment with another lady. The other lady was down here prepared to testify that the most of the time she is there with her every evening.

Both of them work in the Government, and at no time has she ever engaged in any numbers enterprise.

There was other evidence that I think should have been presented to the Court, such as that this apartment was raided on one or two occasions and there were no numbers slips of any kind found in the apartment. And I feel that she was being denied the right to testify in her own behalf.

The COURT. She was represented by experienced counsel at the trial; Mr. Miller represented her. I don't know what you mean by her being denied the right to testify in her own behalf.

Mr. Wood. She states in that affidavit that she asked him for the right to testify and to present these witnesses and he refused to permit her to take the stand.

The COURT. I am not going to make a finding that Mr. Miller did not conduct a proper defense merely on the affidavit of a dissatisfied client.

And the statement that she did not voluntarily waive a jury trial the Court knows to be erroneous because she did it in open court, and the Court interrogated her, as the Court does all defendants.

4 If defendants are going to take the position, after they are convicted, that they didn't voluntarily waive a jury trial and were forced into it, I think perhaps the Court will hereafter refuse to accept waivers if we are going to have trouble of that kind. No, I am going to deny the motion. I don't see any basis for it.

6 The Court will take up the case of Mary Ingram.
Mr. Wood.

Mr. WOOD. Do you have anything to say?

7 Defendant INGRAM. Yes. Judge, Your Honor, I
would like to have something to say.

The COURT. Yes; speak louder so we can all hear you.

Defendant INGRAM. I had never consulted the case with Mr. Miller at all, when I went to his office the first day I seen him

and I told him about the case. When I went back again I seen Mr. Wood, and then when I went back again I seen Mr. Miller once more and I told him Mr. Wood had the case and he said it was all right, and Mr. Wood has had the case all the time, and the day the case came up he just jumped up and I said, "Will you let me get on the stand so I can talk to the Judge and tell him about the case?" and he said, "You don't have to get on the stand, I can talk to him," and he wouldn't let me, and I couldn't say a word.

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